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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/386,655      | 03/13/2003  | John J. O'Mahony     | 3659-56             | 8509             |

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EXAMINER

KOCZO JR, MICHAEL

ART UNIT PAPER NUMBER

3746

DATE MAILED: 01/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/386,655

Applicant(s)

O'MAHONY ET AL.

Examiner

Michael Koczo, Jr.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 7-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 March 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____.  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>06-17-03;10-24-03</u> .   | 6) <input type="checkbox"/> Other: ____.                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1 to 6, drawn to a peristaltic pump having a pump motor, pump head and cartridge, classified in class 417, subclass 477.2.
- II. Claims 7 to 10, drawn to a cartridge for a blood pump having a housing with a latch and an angled tube loop attached to the housing, classified in class 417, subclass 477.12.
- III. Claims 11 to 16, drawn to a peristaltic pump having a pump knob attached to a knob shaft, which knob shaft is attached to a motor shaft, classified in class 417, subclass 477.3.

The inventions are distinct, each from the other because of the following reasons:

Inventions I to III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility since it does not require a housing with a latch or a pump knob attached to a knob shaft. Each of the other inventions likewise does not require the features of each of the remaining inventions. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

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During a telephone conversation with Jeffrey H. Nelson on January 18, 2005 a provisional election was made without traverse to prosecute the invention of group I, claims 1 to 6. Affirmation of this election must be made by applicant in replying to this Office action. Claims 7 to 16 stand withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### *Specification*

The disclosure is objected to because of the following informalities:

On page 2, line 4 states that the pump head is rotatably mounted on the motor shaft. This would prevent the motor shaft from driving the pump head, rendering the device inoperative. It would appear that applicant intended to state that the pump head is connected to the motor shaft so as to be rotatably driven thereby.

On page 6, line 9, numeral 214 should be moved to line 8 following "washer".

On page 10, line 14, "that" should read --than--.

Appropriate correction is required.

### ***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: numeral 119 (page 4, line 4). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

Claim 1 is objected to because of the following informalities: stating that the pump head is rotatably mounted on the motor shaft appears to be incorrect for the reasons as set forth previously. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 1 to 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 2 from the bottom, there is no reference frame to give meaning to "lower" section of the tube loop. Which section is the lower section?

In claim 3, line 3, there is no reference frame to give meaning to "forward" of the cartridge. Which part of the cartridge is the forward part?

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over either of Monk et al or Finsterwald in view of Kappus. Monk et al disclose a peristaltic pump having a pump head 42, a raceway 121, and a cartridge 61 to which a tube loop is attached and which is mountable on the raceway 121. Finsterwald discloses a peristaltic pump having a pump head 28, a raceway 30, and a cartridge 54 to which a tube loop is attached and which is mountable on the raceway 30. However, neither of these references discloses a raceway track having a beveled edge. Kappus discloses a peristaltic pump having a pump head 66 and a raceway 22 having a beveled edge 38 which facilitates loading of the tube and reduces the potential for damaging the tube (col. 5,

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bottom para.). In view of this teaching, it would have been obvious to provide the raceway of either of Monk et al or Finsterwald with a beveled edge.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over either of Monk et al or Finsterwald in view of Kappus, as applied to claim 1 above, and further in view of Baldwin. Baldwin discloses a peristaltic pump having rollers 23 with tapered tube-retaining end flanges 23a to reduce the possibility that the tube moves off the rollers. In view of this teaching, it would have been obvious to provide the rollers of either of Monk et al or Finsterwald with tube-retaining end flanges.

#### ***Allowable Subject Matter***

Claims 3 to 6 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

#### ***Information Disclosure Statement***

It is noted that the IDS of October 24, 2003 duplicates the references which were cited in the IDS of June 17, 2003.

#### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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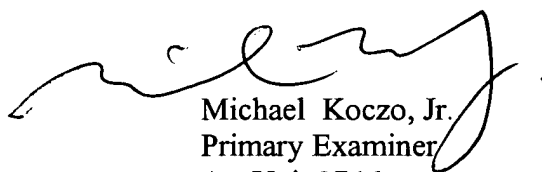
Any inquiry relating to patent applications in general should be directed to the Patent Assistance Center at 1-800-786-9199.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Koczo, Jr. whose telephone number is 571-272-4830.

The examiner can normally be reached on M-Th; 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl Tyler can be reached at 571-272-4834. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael Koczo, Jr.  
Primary Examiner  
Art Unit 3746